

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96420 / December 1, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6196 / December 1, 2022

Admin. Proc. File No. 3-21030

In the Matter of

LEON VACCARELLI

ORDER TO SHOW CAUSE

On September 2, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Leon Vaccarelli pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.¹ On October 26, 2022, the Division of Enforcement filed a motion for default and sanctions against Vaccarelli with supporting exhibits. The Division requests that the Commission find Vaccarelli in default for not filing an answer and bar him from the securities industry based on the record and the allegations in the OIP.

The exhibits to the Division’s motion show that the OIP was served on Vaccarelli on September 12, 2022, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.² As stated in the OIP, Vaccarelli was required to file his answer within 20 days of service of the OIP.³ Vaccarelli also was required to respond to the Division’s motion for default and sanctions by November 7, 2022.⁴ As of the date of this order, Vaccarelli has not filed an answer to the OIP

¹ *Leon Vaccarelli*, Exchange Act Release No. 95671, 2022 WL 4011090 (Sept. 2, 2022).

² 17 C.F.R. § 201.141(a)(2)(i).

³ *Vaccarelli*, 2022 WL 4011090, at *2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

⁴ *See* Rules of Practice 154(b), 160(b), 17 C.F.R. §§ 201.154(b), .160(b); *BDO China Dahua CPA Co.*, Exchange Act Release No. 72753, 2014 WL 3827605, at *1 n.2 (Aug. 4, 2014) (clarifying method of time computation under Rule of Practice 160). The Division served its motion on Vaccarelli by United States mail.

or a response to the Division's motion. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Vaccarelli is ORDERED to SHOW CAUSE by January 17, 2023, why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer, to respond to the Division's motion, or to otherwise defend this proceeding. Vaccarelli's submission shall address the reasons for his failure to timely file an answer or response to the Division's motion, include a proposed answer to be accepted in the event that the Commission does not enter a default against him, and address the substance of the Division's request for sanctions. Vaccarelli shall deliver any response, including any answer, to the proper prison authorities no later than the due date, for forwarding to the Commission's Office of the Secretary.⁵ If Vaccarelli responds to this order to show cause, the Division may file a reply within 28 days after its service.

When a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without holding a public hearing.⁶ The OIP informed Vaccarelli that a failure to file an answer could result in deeming him in default and determining the proceedings against him.⁷

The failure to timely oppose a dispositive motion is also a basis for a finding of default.⁸ Like failing to timely file an answer, failing to timely oppose a dispositive motion may result in the determination of particular claims, or the proceeding as a whole, adversely to the non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time.⁹

⁵ See *Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that, under federal prison mailbox rule, *pro se* prisoners' notices of appeal are "filed" at moment of delivery to prison authorities for forwarding to the district court); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (per curiam) (noting that this "mailbox rule [applies] to other filings by *pro se* prisoners").

⁶ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁷ *Vaccarelli*, 2022 WL 4011090, at *2.

⁸ See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. § 201.155(a)(2), .180(c); see, e.g., *Behnam Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

⁹ See, e.g., *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sep. 29, 2017); *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *2-3 (Mar. 30, 2017), *abrogated in part on other grounds by Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at *1 n.6 (Apr. 13, 2006).

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.¹⁰

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

¹⁰ *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81. And the amendments provide further requirements if a person cannot reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices. *Id.* at 86,478-79.